

*courtesy translation – only the Italian text is authentic.*

***Annex A to Decision No 151/2019 of 21 November 2019***

**Indications and requirements concerning the  
“Network Statement 2021” submitted by the infrastructure manager  
of the national rail network, R.F.I. S.p.A., the “Network Statement 2020”,  
and the preparation of the “Network Statement 2022”.**

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## Introduction

By note of 11 October 2019, registered as received under ART ref. no. 12363/2019, Rete Ferroviaria Italiana S.p.A. (hereinafter: RFI or, alternatively, IM) submitted the final draft of the Network Statement 2021 (hereinafter: NS 2021), together with the comments received from stakeholders following the consultation, as well as its ensuing assessments.

This document — whose objective scope refers exclusively to the national railway infrastructure managed under a concession agreement by RFI S.p.A. pursuant to the Decree of the Minister for Transport and Navigation No 138T of 31 October 2000, under the conditions laid down therein and in its later additions, as well as in the Programme Contract concluded with the State — the Authority provides its indications and requirements, pursuant to Article 14 (1) of Legislative Decree no 112 of 15 July 2015 and Article 37 of Decree-Law no 201 of 6 December 2011, converted with amendments into Law no 214 of 22 December 2011, with respect to sections 1, 2, 3, 4, 5 and 6 of the a.m. NS 2021.

For each of these sections and for each of the subjects under consideration, reported below are:

1. the Authority's relevant assessments following the analysis of the draft NS 2021 sent by RFI on 11 October 2022;
2. the ensuing indications and requirements for the Infrastructure Manager of the national rail network.

In providing such indications and requirements, account has been taken of the outcome of the Authority's activities carried out in the area of interest over the last year, including in relation to the reports received and the findings from the IM's hearing on 30 October 2019, paying special attention, *inter alia*, to the needs that may arise from the congestion of sections of the network as well as to the issue of the overall level of punctuality of railway services.

The indications and requirements which apply already from the 2019/2020 timetable are highlighted with **blue formatting** (in this case, although the numbering of sections, subsections, and paragraphs is referred to the NS 2021, it shall be understood as referring to the sections, subsections, and paragraphs of the NS 2020 which, while possibly presenting a different numbering, relate to the same subjects); indication 6.1.2.1 refers to the preparation of the NS 2022, that will be carried out in 2020.

### Main abbreviations used in the document:

Authority:	Transport Regulation Authority ( <i>Autorità di regolazione dei trasporti</i> );
DD:	Delegated decision;
ERA:	European Union Agency for Railways;
FA:	Framework agreement;
GTFS:	General Transit Feed Specification;
HS/HC:	High Speed/High Capacity;
IM:	Infrastructure manager of the railway network;
MIT:	Ministry of Infrastructure and Transport;
NS:	Network Statement adopted by RFI;
PR:	Performance Regime;
PSC:	Public Service Contract;
PSO:	Public Service Obligations;
RFI:	Rete Ferroviaria Italiana S.p.A.;
RNE:	Rail Net Europe;
RU:	Railway undertaking;
TSI:	Technical Specifications of Interoperability.

## 1. General information – Section 1 of NS

### 1.1 Legal framework, Definitions, Appeals

#### 1.1.1 Assessments by the Authority

Concerning the list of regulatory sources outlining the legal framework of the NS, the following is underlined:

- at the EU level, failure to mention Directive (EU) 2016/798 on railway safety (transposed into Italian legislation by Legislative Decree no 50/2019), Directive (EU) 2016/797 on the interoperability of the rail system within the European Union (transposed into Italian legislation by Legislative Decree no 57/2019), Regulation (EU) 2016/796 establishing a European Union Agency for Railways, Implementing Regulation (EU) 2018/1795 laying down procedure and criteria for the application of the economic equilibrium test.
- at the national level, failure to mention ART's Decision no 106/2018 on "Measures concerning the minimum rights that may be claimed from infrastructure managers and rail operators by users of rail transport services subject to public service obligations", as well as ART's Decision no 130/2019 on "Measures concerning access to service facilities and rail-related services" and Legislative Decree no 50/2019 implementing Directive 2016/798 of the European Parliament and of the Council of 11 May 2016 on railway safety. (19G00057)". Considering that Legislative Decree no 50/2019 repealed and replaced Legislative Decree no 162/2007, the latter source should be removed from the a.m. list and the relevant references in the NS 2020 and NS 2021 should be updated accordingly.

The current definition of "safety certificate" should be updated as "single safety certificate".

Taking into account also the website content of major EU infrastructure managers, RFI should keep available to the stakeholders on its website the NSs of previous years and related documentation (drafts, comments by interested parties and counterarguments by RFI, etc.); at the hearing of 30 October, RFI expressed its willingness to accept this proposal, subject to technical implementation needs and assuming a period of three years. The Authority considers that allowing stakeholders access to useful documents to be informed on the regulatory developments of access to infrastructure is essential for the purpose of transparency, in particular, with reference to the consultations on the following versions of the NS and the related results in terms of final texts adopted. Therefore, a request to the IM to keep these documents available for a period of five years is considered reasonable.

Finally, it is considered necessary to provide that:

- the only official channel whereby complaints may be lodged in relation to the NS is exclusively the certified e-mail box of the Authority;
- as agreed with RFI at the hearing, the English version of the NS is published no later than fifteen working days from the publication of the Italian final version or update.

#### 1.1.2 Indications

##### 1.1.2.1 The IM should:

- a) include in paragraph 1.3 "Legal framework": Regulation (EU) 2016/796, Directive (EU) 2016/797, Directive (EU) 2016/798, Implementing Regulation (EU) 2018/1795, Legislative Decree No 50/2019, ART's decisions No 106/2018 and No 130/2019;
- b) update in the NS the references to Legislative Decree no 162/2007, replacing them with the relevant references referred to in the current Legislative Decree no 50/2019.

##### 1.1.2.2 In paragraph 1.11 Glossary "Safety certificate" should be amended as "Single safety certificate".

**1.1.2.3 The definition of ePIR portal should be included in paragraph 1.11 “Glossary”.****1.1.3 Requirements**

- 1.1.3.1** The IM is required to include the following as the last paragraph of paragraph 1.7 of the NS: “The English version of the NS is published on the IM's website no later than fifteen working days from the publication of the Italian final version or update.”
- 1.1.3.2** The IM is required to replace the address [reclamipir@autorita-trasporti.it](mailto:reclamipir@autorita-trasporti.it) with [pec@pec.autorita-trasporti.it](mailto:pec@pec.autorita-trasporti.it) in paragraph 1.4.3 “Appeals procedure”.
- 1.1.3.3** The IM is required to include the following in paragraph 1.7 of the NS: “The previous versions of the NS (final and for consultation) issued by RFI as of 2013, as well as the related documents (comments by the concerned parties and counterarguments by RFI, etc.) are available in a dedicated section of the [www.rfi.it](http://www.rfi.it) website.”

**2. Access conditions – Section 2 of NS****2.1 Path and service request for the purpose of the conclusion of the Access Contract****2.1.1 Assessments by the Authority**

Pursuant to requirement 2.1.3.1 of Decision no 118/2018, the IM, in paragraph 2.2.2.2 of the NS, shall introduce the possibility that the RU that, when requesting train paths for the following timetable period, does not already hold a single safety certificate for the relevant train paths, may produce the extended certificate within the deadlines referred to in par. 2.3.2.1. of the NS. The second paragraph of paragraph 2.2.2.2 erroneously mentions the obligation to produce the extended certificate within the deadline for submitting comments on the draft timetable, according to the timeline shown in paragraph 4.3.2 of the NS; this contradicts what is stated in point 1 (c) of paragraph 2.2.2.2. The IM is therefore required to delete the term “extension” in the second indent of paragraph 2.2.2.2 of the NS as it is a typo with respect to the aforementioned requirement.

**2.1.2 Indications**

- 2.1.2.1** No indications are provided.

**2.1.3 Requirements**

- 2.1.3.1** In the second indent of paragraph 2.2.2.2, the IM shall replace the term “extension/safety certificate” with “single safety certificate”.

**2.2 Single safety certificate and acceptance of rolling stock****2.2.1 Assessments by the Authority**

By Directive (EU) 2016/798 (transposed into Italian legislation by Legislative Decree no 50/2019) and Directive (EU) 2016/797 (transposed into Italian legislation by Legislative Decree no 57/2019), the regulatory framework concerning the safety certificate and acceptance of rolling stock was amended with the ensuing “single safety certificate”, usually issued by the European Railway Agency (ERA), as well as the vehicles authorisations to be placed on the market, likewise issued by the Agency; paragraphs 2.2.4 and 2.7 of the NS should therefore be updated accordingly.

## 2.2.2 Indications

2.2.2.1 The IM should update paragraph 2.2.4 of the NS with reference to the new regulatory framework relating to the “single safety certificate”, as set out in Legislative Decree no 50/2019.

2.2.2.2 The IM should update paragraph 2.7 of the NS with regard to the new regulatory framework concerning the acceptance of rolling stock.

## 2.2.3 Requirements

No requirements are provided.

## 2.3 **General business/commercial conditions. Framework agreements.**

### 2.3.1 Assessments by the Authority

Certain traffic routes of the national railway infrastructure are subject to high levels of use and the IM stated that some sections are already congested. Under these conditions, the use of FAs, while being a useful tool for industrial and commercial planning and scheduling for the stakeholders and the IM itself, can potentially pose critical issues with respect to the possibility for new entrants to purchase infrastructure capacity. For this reason, a few requirements should be introduced in the rules of the FAs contained in the NS. Their content is illustrated below, following a reference to the relevant regulatory provisions currently in force.

Decision no 70/2014, and in particular requirement 1.6.2, reads as follows: "Measure 1.6.2. *The infrastructure manager of the railway network is required, by amending the Network Statement appropriately, to provide for:*

- a) *deletion of the reference to the 70 % threshold of the overall capacity of the entire network in the context of the allocation process and with regard to the definition of capacity thresholds that may be allocated under the Framework Agreements;*
- b) ***identification of 85 % of the total capacity threshold available for each route and each time slot as a new threshold of total capacity attributable under all the Framework Agreements;***
- c) *introduction of the possibility for the individual holder of the Framework Agreement, **when annually entering into an access contract, to access, in the absence of other requests, up to 100 % of the available capacity;***
- d) ***introduction of safeguard clauses into the model framework agreement without prejudice to the right of access, in terms of capacity, to railway infrastructure by new entrants.*** (emphasis added).

In addition, requirement 2.2.2. of the aforementioned Decision no 76/2014, resuming the provisions under Decision no 70/2014, sets out as follows: "Measure 1.6.4. *After consultation with Regions, Autonomous Provinces and other entities providing railway services of non-national interest, the IM shall adopt a model Framework Agreement to be used by such entities for the reservation of capacity for the operation of local public transport services. This model shall comply with the following principles:*

[...]

- c) ***possible reservation of capacity for the operation of regional services even beyond the threshold set for the other framework agreements, without prejudice to measures for the protection of new entrants;***

[...]" (emphasis added).

Furthermore, for the purpose of implementing Regulation (EU) 2016/545, the IM introduced, in the NS 2018, paragraph 4.4.1.2 for the management of conflicts both between requests of FAs and between FAs and annual capacity requests. Decision no 140/2016 on “Indications and requirements concerning the “Network Statement 2018”, submitted by the manager of the national railway network, R.F.I. S.p.A., and the “Network

Statement 2017” in force. Indications relating to the drawing up of the “2019 Network Statement”, under requirement 4.3.1, established both the deletion of the provision under Article 4 of the model FA and the amendment of paragraph 4.4.1.2, in order to give full application to the power of the IM to request the surrender of part of the capacity already covered by a FA on the basis of the provisions of Implementing Regulation (EU) 2016/545. The a.m. requirement 4.3.1 reads as follows: *“With regard to the capacity allocation process, the wording of paragraph 4.4.1.2 of the NS 2018 and Article 4 of the model Framework Agreement (Annex 2 to Section 2) is amended by removing the provisions limiting the application of the clause under Article 9 (4) of Implementing Regulation (EU) 545/2016 to only once during the implementation of the framework agreements, and to the maximum amount of 10 % of the capacity covered by existing framework agreements.”.*

The issues arising in March 2019, in the context of the Authority’s supervisory and monitoring activities, and the related sanctioning proceeding, initiated by Decision no 46/2019 and concluded by Decision no 98/2019, highlighted significant criticalities with respect to the use of a tool, i.e. the FA, in a context of highly congested infrastructure such as that concerning certain sections and facilities where 85% of the allocated capacity is covered by FAs, as compared to a market scenario that from December 2020 (therefore, in the period covered by the NS2021) opened to full liberalisation of national passenger rail transport. The issues identified are outlined here below:

- failure by the IM to provide the Authority with the FAs or their amendments as soon as they are concluded;
- incorrect practice concerning the use, also for the purpose of extending the duration of the FA, of covenants to the FA for the purpose of the variation of capacity;
- no time limit for the requests to renew existing FAs or to conclude a new FA made by an applicant holding a FA in force that is no longer renewable; such limit would prevent prior capacity withholding by entities already operating on the market, with a simultaneous barrier effect both to the access of new applicants and to the development of the activities of other competitors;
- existing derogation, in paragraph 4.4.1.1 of the NS, from the 85% threshold of the maximum capacity that may be allocated by route and time slot in favour of the existing FAs; it is not considered necessary in this procedure to introduce changes to this threshold, as defined by Decision No 70/2014.
- possibility, provided for in Decision no 76/2014, of reserving capacity, on the basis of PSO FA, up to 100% of the available capacity makes the coordination process difficult, with respect to both access requests of new entrants and annual requests for capacity, and results in the ensuing loss of the capacity margin available for annual requests, usually equal to 15%;
- failure to provide penalties to be imposed on the IM in case the latter requests applicants to surrender framework capacity, as provided for in Article 23 (5) of Legislative Decree no 112/2015 and Article 13 of Implementing Regulation (EU) 2016/545, could affect the application of the powers of the IM concerning surrender of capacity.

On the basis of the issues described above, in accordance with Article 23 (3) and (4) of Legislative Decree no 112/2015, in order to prevent that the FAs hinder the use of the infrastructure by other applicants/services and to allow best use of the railway infrastructure, the following requirements are provided:

- taking into account the provisions of Article 23 (8) of Legislative Decree 112/2015 and within the limits set forth therein, a Framework Agreement may be renewed only once and only with the express of the Authority; consequently, the modification of the deadline of a Framework Agreement is not permitted;
- requests for renewal of existing FAs or for conclusion of a new FA made by an applicant holding an existing FA that is no longer renewable may be made no more than 18 months in advance of the start of the timetable period covered by the renewal or the new FA;
- the Framework Agreements and the variations of capacity are transmitted to the Authority within one month of the subscription, together with a table containing the updated summary of all the existing



AQ, with details of the subjects subscribing the AQs, the original subscription and maturity dates, of any dates of modification of the pre-assigned capacity, of any renewal and expiry dates, of the routes/lines/sections subject to pre-assignment of capacity, of the percentage of pre-assigned capacity on these routes/lines/routes per time slot, of the contents of any withdrawal clauses and the content of any penal clauses;

- the renewal of FAs is subject to the express permission of the Authority;
- the maximum 85% limit of framework capacity cannot be exceeded (the requirement should refer to the relevant paragraph 4.4.1 of the NS and is therefore described in Chapter 4 of this document);
- the IM should consider the possibility of providing in the NS and in the relevant FA models a system of appropriate penalties to be imposed upon the same IM, in the case of a request for surrender of capacity to an holder of a FA; although Article 23 (5) of Legislative Decree no 112/2015 and Article 13 of Implementing Regulation (EU) 2016/545 provide that the adoption of penalty clauses in the FA is possible and not mandatory, their absence could affect the decisions of the IM when coordinating FAs and leave the compensation scheme of the contractual parties undefined in the event of withdrawal of capacity, giving rise to civil litigation proceedings;
- the extension of the model FA for local public transport to all services subject to public service obligations [including long-distance services under the State's remit pursuant to Legislative Decree no 422/97, which under Article 3 (d) provides that public services of national interest are "*international rail services and national medium-long distance rail services characterised by high quality standards*". These services are strictly identified by decree of the Minister of Transport and Navigation].

Finally, in line with the provisions of Article 23 (9) of Legislative Decree no 112/2015 and Article 3 of Regulation (EU) 545/2016, with regard to the obligation to notify to interested parties the general features of the FA, paragraph 2.3.1 of the NS should be supplemented by specifying a time-limit of 90 days from the conclusion/variation/termination of a FA for the publication of the update of the technical annex "The capacity allocated under Framework Agreements, by time slot and line section," and a new document summarising the existing FAs (the latter containing, for each FA, at least: expiry date, percentage of capacity pre-allocated with the Framework Agreement on these routes/ routes/lines/sections by time slot, content of any withdrawal clauses and content of any penal clauses to be published on the IM's website.

### **2.3.2 Indications**

No indications are provided.

### **2.3.3 Requirements**

2.3.3.1 The IM is required to make the following changes to paragraph 2.3.1(a) "Content and term":

- a) replace the fourth indent as follows: "The latter case includes both Framework Agreements concluded with Regional and Provincial Governments for local public transport services, and Framework Agreements with the Italian State for long haul services, the term of which may be commensurate with that of the service contract for operating local transport services";
- b) introduce at the end of the paragraph the following: "Taking into account the provisions of Article 23, paragraph 8, of Legislative Decree no 112/2015 and within the limits set forth therein, a Framework Agreement may be renewed only once and only with the express permission of ART; consequently, the modification of the deadline for a Framework Agreement is not permitted";
- c) introduce in the paragraph the following: "The IM transmits the Framework Agreements and the capacity changes to the ART within one month of the subscription, together with a table containing the updated summary of all the existing AQ, with details of the subjects subscribing



the AQs, the original subscription and maturity dates, of any dates of modification of the pre-assigned capacity, of any renewal and expiry dates, of the routes/lines/sections subject to pre-assignment of capacity, of the percentage of pre-assigned capacity on these routes/lines/sections by time slot, of the contents of any withdrawal clauses and the content of any penal clauses”;

- d) introduce in the paragraph the following: “In compliance with the provisions of article 23, paragraph 9 of Legislative Decree no 112/2015 and article 3 of Regulation (EU) 2016/545, regarding the "Framework capacity declaration", the IM:
- publishes, in the ePIR portal, the technical annex “Capacity allocated with Framework Agreement, by time slot and line section” indicating for each section of the line and for each year, until the expiry of the current Framework Agreements, the following information: the hourly commercial capacity, the maximum hourly capacity that can be assigned with the Framework Agreement, the number of routes per time slot assigned with the Framework Agreement;
  - publishes, on its website (section "the Network Statement"), a summary document relating to the existing Framework Agreements, including, for each Framework Agreement, the general aspects consisting of at least the following information: expiry date, tracks/lines/sections subject to pre-allocation of capacity as well as percentage of capacity pre-assigned with the Framework Agreement on these tracks/lines/sections by time slot, content of any withdrawal clauses and content of any penal clauses.

The IM shall update the technical annex and the summary document no later than 90 days of the conclusion of a Framework Agreement, amendment thereto or termination thereof.”.

- 2.3.3.2 The IM is required to replace the third indent of paragraph 2.3.1(c) “Capacity changes”, as follows: “For higher capacity needs, in excess of the capacity specified in the Framework Agreement, and of the proposed alteration threshold, the Applicant may submit a specific request. If the IM grants the request, the capacity specified in the Agreement shall be amended, in accordance with the maximum threshold set out in paragraph 4.4.1.1, and the amendment shall enter into effect from the first useful timetable period. Changes in capacity cannot lead to changes in the time limits for the expiry of the modified Framework Agreement.”.**
- 2.3.3.3 The IM is required to amend Annex 3 to Section 2 “Standard Form of Framework Agreement for local public transport services” so that it is also applicable to long-haul services classified as public services of national interest.**
- 2.3.3.4 The IM is required to launch a consultation with the RUs no later than 31 January 2020 in order to assess the introduction, in the NS 2021 in the relevant FA models, of a system of appropriate penalties to be imposed upon the IM, in the case of a request for withdrawal of the capacity made to a holder of a FA, in accordance with the provisions of Article 23(5) of Legislative Decree no 112/2015 and Article 13 of Implementing Regulation (EU) 2016/545; the outcome of the consultation shall be communicated to the Authority by 30 June 2020 at the latest and published by the IM in the NS, on the occasion of the first extraordinary useful update.**

## **2.4 Information to be provided by the IM before and during the transport services in respect of capacity reductions**

### **2.4.1 Assessment by the Authority**

Paragraph 2.3.3.5 of the NS provides different timing for the communication of unavailable capacity to interested parties in order to include the most significant unavailability in the timetable. To this end, also in order to complete the commitments proposed by RFI in the context of the proceeding referred to in Decision no 80/2019, the reference to paragraph 7 (1) and (2) should be deleted as they are related to more significant unavailability that must be included in the timetable.

The annex to DD (EU) 2017/2075, under paragraph 8 et seq., sets out a number of reporting obligations for the IM for the most relevant capacity restrictions, where this relevance is measured in terms of duration of the restriction and percentage of diverted/deleted traffic. In the consultation, FerCargo renewed what had already been requested in the consultation of the NS 2020, namely that the transparency of the criterion for the definition of the percentage of diverted/deleted traffic be ensured, making it monitorable and measurable by applicants, through the obligation by the IM to report or publish at certain deadlines; given that the information at issue may be useful to stakeholders as a synthetic indicator of the relevant capacity restrictions, the Authority, with under 2.2.2.2 of Decision no 118/2018, had already invited the IM to give the same adequate publicity as for the information referred to in paragraph 15 of the Annex to DD (EU) 2017/2075, at the same time of the launch of the relevant consultations referred to in paragraphs 8 and 12 of the Annex. RFI has in fact included in the technical annex “Reduction of infrastructure capacity” a column for the requested data, which is however unused to date, according to the Authority’s findings; RFI confirmed at the hearing of 30 October that this information is not included in the technical annex to the ePIR portal, but that it was communicated to RUs by sending formal notes. In consideration of the above, the Authority considers it necessary to provide that it is mandatory to highlight this information for any capacity reduction, otherwise the communication will not be valid.

### **2.4.2 Indications**

No indications are provided.

### **2.4.3 Requirements**

- 2.4.3.1 The IM is required to complete, for any unavailability published in the “Infrastructure capacity reductions” scheme, the field “ESTIMATED IMPACT OF CANCELLED/DIVERTED SERVICES” (REF. ANNEX 7) and to supplement point 4 of paragraph 2.3.3.5 as follows: “Failure to indicate the estimate or the final value of the volume of traffic cancelled/diverted implies the lack of validity of the communication of the relative unavailability.”.**
- 2.4.3.2 The IM is required to delete from paragraph 7 of paragraph 2.3.3.5 of the NS the reference to points 1 and 2 thereof.**

## **2.5 Procedures for coordinating transport services and management rules**

### **2.5.1 Assessments by the Authority**

The IM defines in full autonomy its organisation while exercising its main functions of capacity allocation, train service regulation and infrastructure maintenance; in particular, the current technological development is enabling these functions to be progressively centralised in a limited number of decision-making centres. With the increase in the level of use of the network, stakeholders are very much interested in gaining insight not only of the rules of management or allocation of capacity adopted by the IM, but also of the territorial functions and jurisdictions of these decision-making centres and of the individual operating stations where these rules are applied in practice. Both the succession of different workstations along the train route and the different

jurisdiction defined for the structures of the IM dedicated to the allocation of capacity have effects both on punctuality and on the efficient use of the infrastructure (different decision-making structures can take different decisions on equal terms, as in the case of short-notice requests for freight paths on some routes pertaining to the national border). In the case of local PSO services, the awarding entities should be involved in the modification of the areas of jurisdictions of the operating stations in charge of managing the traffic of the a.m. local PSO services. At the hearing of 30 October, RFI pointed out that in the case of PSO, the references of the traffic of interest to its services are usually communicated to the awarding authorities, and that from a technical point of view these data are already available to the RUs through the Circulars and Line Files published by the IM; RFI agreed to accept the Authority's proposal, although it considered that the publication of the detailed location of the operating stations is not useful.

The centralisation described above assumes the extensive use of decision support systems both in the activities of capacity allocation and in those of traffic management to allow individual operators to assess different possible solutions with greater efficiency and effectiveness. With regard to traffic management, the shorter time available to make decisions on the resolution of conflicts or other issues requires that these IT systems propose solutions in line with the management rules and based on parameters and cases also known to the stakeholders directly concerned such as railway undertakings. At the above-mentioned hearing RFI stated that currently it does not have algorithms of this type, with the exception of supervisory systems which apply, as a single rule, prioritisation to the first train that comes along; however, the rule is always subject to the judgment of the traffic operator; RFI is developing a timetable design (including optimisation) and traffic management system, which will be substantiated by specific algorithms that will be shared with the Authority. The Authority therefore considers it appropriate, pending the adoption of these advanced tools, to provide for a specific obligation on the IM to publish the algorithms of decision support systems for traffic management activities, as well as the necessary parameterisations for the different decision-making centres operating on the national territory.

A single deadline should be defined in the NS (28 February of each year) in order to comply with the obligation to publish in the ePIR portal the results and the target values concerning punctuality performance and give them adequate visibility on the homepage of the corporate website; in order to allow adequate transparency, the punctuality targets should be expressly identified by numerical values in the form "xx,yy%". Furthermore, for PSO FAs, it is necessary to ensure that FA holders receive precise information on the planned and real average commercial speed (differentiated by train/route/PSC) by appropriately supplementing the PIC queries and the aforementioned technical annex where the final and target punctuality values are reported as laid down under requirement 2.3.3.3 of Decision no 118/2018.

Paragraph 2.4.2 of the NS incorrectly refers to the consultation procedure under requirement 6.2.3.3 of Decision no 118/2018, at the end of which the Authority adopted Decision no 93/2019; this must be corrected by explicitly referring to Decision no 16/2018 and to the valorisation of the indicators through RFI PIC platform.

Finally, the incorrect reference to paragraph 2.4.6 under paragraph 4.8 concerning special measures to be taken in the event of disruption should be amended and be referred to paragraph 2.4.3.

## **2.5.2 Indications**

- 2.5.2.1** The IM is given the indication to amend the incorrect reference to paragraph 2.4.6 under paragraph 4.8 "Special measures to be taken in the event of disruption"; instead, reference should be made to paragraph 2.4.3 "Management of disrupted services".
- 2.5.2.2** The IM is given the indication to replace the seventh indent of paragraph 2.4.2 "Management rules" as follows: "Furthermore, RFI measures the actual punctuality of trains arriving at the main stations of the network by market segments (intermediate or destination) reported in a specific technical annex to the ePIR portal. The % OS (0-5) and % OS (0-15) indicators, as per measure 7 of ART Decision no. 16/2018 of 8 February 2018, can be calculated through the PIC system."

### 2.5.3 **Requirements**

- 2.5.3.1** The IM is required to include the following in paragraph 2.4.1 of the NS after the second indent: “The IM adopts or modifies the areas of jurisdiction of the decision-making centres (central and peripheral) of capacity allocation, coordination and regulation of the circulation and maintenance and restoration of the infrastructure, as well as of the relative operating stations, based on criteria based on efficiency, effectiveness and cost containment for users; in order to guarantee the limitation of the spread of delays along the lines, the identification of the areas of jurisdiction promotes the unity of the management of the main short/medium distance traffic relationships. The adoption and/or modification of the jurisdiction of peripheral decision-making centres, in the case of services characterised by local public service obligations, is communicated in advance to the administration entrusting the obligation of local public service. The jurisdiction of the decision-making centres for capacity allocation, coordination and regulation of the circulation and maintenance and restoration of the infrastructure is published, in graphical and tabular form, among the technical documents of the ePIR portal; following changes to these areas, the IM will update the relevant technical documents of the ePIR portal within 30 days.”
- 2.5.3.2** It is required that, upon the first application of requirement 2.5.3.1, the technical annexes referred to therein be published in the ePIR portal no later than 31 December 2020.”.
- 2.5.3.3** The IM is required to include the following in paragraph 2.4.1 of the NS: “The IM, in compliance with the suppliers' trade secrets, announces, in a special technical annex to the ePIR portal, the algorithms eventually adopted in its own decision support systems in the field of traffic management including their value settings. Every two years the IM analyses any comments made by the Authority and potential applicants, including the assigning Administrations concerned, making any changes and giving reasons for their choices.”.
- 2.5.3.4** It is required that the IM transmits to the Authority no later than 30 March 2020 a timetable and a report on the activities of development and application of the algorithms referred to under requirement 2.5.3.3.
- 2.5.3.5** It is required that the IM replaces the eighth indent of paragraph 2.4.2 (on final and target performance data) as follows: “The data relating to punctuality performance of the previous service timetable and the target values for the following time (defined with the following numeric format "xx, yy%") are published, no later than 28 February of each calendar year, in the ePIR portal, in the Technical Documents section, and recalled in a special section of the homepage of the website [www.rfi.it](http://www.rfi.it).”
- 2.5.3.6** It is required that by 31 December 2020 RFI include:
- a. the PIC Web application in such a way as to allow to calculate, with reference to the different timetables, the scheduled and real average value of the commercial speed by route and total services related to each public service contract;
  - b. the technical annex to the ePIR portal which shows the punctuality performance with an indication, for each public service contract, of the scheduled and real average commercial speed of the related trains.

## 2.6 Services in adverse weather conditions

### 2.6.1 Assessments by the Authority

The RU Mercitalia has requested that Annex 4 to Section 2 of the NS (service in the case of snow/ice) be integrated with the explicit principles to be adopted to safeguard the continuity of freight traffic in line with the measures adopted for passenger traffic segments. The Authority has already indicated (indication 2.6.2.1) with its previous Decision no 118/2018 that the contingency plans drawn up by RFI to deal with adverse weather events should be made available to interested parties; by letter dated 2.4.2019 (registered as received by the Authority under ART ref. no. 3137/2019) RFI confirmed the publication in the ePIR portal of the plans for to reschedule the offer in case of snow and frost weather alert for the 2019/2020 timetable. In particular, at the hearing on 4 April 2019, RFI provided ART with a copy of the snow and ice emergency plans including the guidelines for rescheduling freight services; these guidelines identify three critical points of freight traffic to be considered: variability of working timetable, potentially critical weight and length characteristics in the event of adverse weather conditions, unavailability of train destination terminals. At the hearing of 30 October, RFI highlighted that, out of about 580 scheduled daily freight trains, a percentage of 25 % is submitted in the short term: this, together with the other reasons already reported by RFI when assessing the comments submitted by the RU on the first draft of the NS 2021, would make it impossible to draw up a contingency plan for the freight segment as detailed as for the regional and LH passenger segments; however, RFI, as expected by the Authority in relation to the legitimate needs of the freight segment, has already initiated this year several discussions with freight station operators regarding the capacity they are able to guarantee in the event of adverse weather conditions; this should enable RFI to identify possible safeguard measures to protect freight traffic.

On account of the need to provide interested parties with the possibility of access to the contents of the plans drawn up by RFI to deal with major weather events, the Authority considers it necessary that paragraph 2.4.3 of the NS be appropriately supplemented by further providing that the plans in question also include specific coordination measures with the terminals of origin and destination of freight trains aimed at safeguarding freight traffic, within the limits of the available capacity.

### 2.6.2 Indications

No indications are provided.

### 2.6.3 Requirements

- 2.6.3.1 **RFI is required to supplement paragraph 2.4.3 of the NS as follows: “The IM publishes all contingency plans, even previously drafted, in the ePIR portal with reference to particular types of adverse weather conditions or against specific forecasts of adverse weather conditions. These plans also include specific coordination measures, with the terminals of origin and destination of freight trains, aimed at safeguarding freight traffic within the limits of available capacity.”.**

## 2.7 Economic consequences due to delays caused by the Infrastructure Manager

### 2.7.1 Assessments by the Authority

As a result of the consultation process on the Performance Regime carried out under Decision no 93/2019, following the evaluations of the same IM on the possible connection with the actual economic damage caused to the persons affected by the delay, as referred to in Decision no 140/2017, the IM proposed to include penalty clauses in the NS 2021 to be imposed on the IM in the case of freight and passenger trains arrived at destination with considerable delay caused by the IM.

In the consultation procedure of the NS, several stakeholders highlighted the need that for the rail freight segment, the penalties that RFI has committed to pay be progressive, in the context of the consultation on the new performance regime, similarly to that provided for the passenger segment. RFI did not accept the proposal, justifying its refusal both with the absence of specific legislation – while referring, on the other hand, to Regulation (EC) No 1371/2007 concerning the passenger segment – and a greater variability of freight traffic compared to passenger traffic. However, the second justification cannot be shared as it is not related to train path short-notice requests, and therefore granted with lower quality levels, but rather to paths in the scheduling measures (VCO) (paragraph 4.3.4 of the NS, “Schedule for Working Timetable”) or during the annual planning or adjustment process; for this second type of paths, the punctuality band to be taken as a reference is defined by RFI itself in paragraph 2.4.2 of the NS, where for the freight segment trains are considered punctual if they arrive at their destination with a delay equal to or less than 30 minutes, compared to 5 minutes of the passenger segment, to which suitable and equal (for both segments) increases in delay are applicable.

At the hearing of 30 October RFI stated that it agreed upon the principle of a progressive system of penalties for freight transport, but highlighted an estimated cost for the IM accounting for approx. EUR 2.5 million.

While being aware of the possible burden on the IM, the Authority considers that, also considering the statement of congestion made by the IM on different routes in 2019, it is reasonable to introduce a system of penalties for both the passenger and freight segments, providing for progressivity of the system for the latter segment as in the case of the passenger segment, already starting from the NS 2020 in order to encourage the IM to achieve, in terms of the overall level of punctuality of rail services, higher performance than those recorded in previous years; in order to build for freight trains a comparable penalty scheme as that provided for in paragraph 2.4.3.1 of the NS for the passenger segment, the Authority considers it appropriate to take as a reference the delay thresholds provided by RFI for the passenger segment under paragraph 2.4.3.1 above and to maintain 180 minutes as the lower threshold for freight transport, corresponding to the full reimbursement of the cost of the track net of the cost of traction current; given that the second passenger threshold is obtained by adding 115 minutes to the 5-minute punctuality tolerance, and that the second freight threshold is obtained by adding 150 minutes to the 30-minute punctuality tolerance (with a difference of 35 minutes from the first one), it is possible to identify the limit of the first freight threshold by adding the a.m. value of 35 minutes to the limit of the first passenger threshold, thus identifying the following table:

Punctuality threshold (tolerance)	Delay, first threshold (beyond tolerance)	Delay, second threshold (beyond tolerance)
5'	+ 55'	+ 115'
30'	+ 90'	150'

These thresholds correspond to those proposed by the stakeholders and, in the Authority’s opinion, represent a correct application of the principle underlying paragraph 2.4.3.1.

The PIC WEB application must therefore be supplemented with the information concerning the penalties referred to in paragraph 2.4.3.1 for each railway undertaking and each separate public service contract.

Further, Article 5 of the FA scheme for PSO services, Annex 3 to Section 2 of the NS, should be updated, providing that the information made available to the awarding authorities also include a report on the penalties in the contractual relationship between the RU, to which the service was awarded, and the IM.

## 2.7.2 Indications

No indications are provided.



### **2.7.3 Requirements**

- 2.7.3.1** It is required to include, in paragraph 2.4.3.1, for the freight segment, in addition to the provisions concerning delays exceeding 180 minutes, the provision of a penalty of 50 % of the cost of the track (net of any cost of traction current) for train delays between 120 and 179 minutes.
- 2.7.3.2** The IM is required to include paragraph 2.4.3.1 of the NS 2021, as updated under requirement 2.7.3.1, in the NS 2020 as well.
- 2.7.3.3** RFI is required to update the PIC WEB application to display, including with reference to the individual train, the penalties referred to in paragraph 2.4.3.1 of the NS for each RU and for each PSC by 30 June 2020 at the latest.
- 2.7.3.4** RFI is required to replace the first indent of Article 5 of Annex 3 to section 2 of the NS as follows: “The IM warrants and represents that the information stored in its data banks, and relating to the punctuality, the cancellation of the trains referred to in the Access Contract entered into in accordance with the following clause 7, and the reports on the charges and the Performance Regime shall be directly accessible to both the RU and the holder of the FA (other than a RU).”.

## **2.8 Processing of compensation claims for persons with reduced mobility pursuant to measure 5 of ART decision no 106/2018**

### **2.8.1 Assessments by the Authority**

The procedure for processing compensation claims for persons with reduced mobility, proposed by RFI pursuant to measure 5.2 of Decision no 106/2018 (entered into force as of May 2019 for station managers as provided for in measure 10 (2) thereof) is currently included in the NS as Annex 8 to Chapter 2. However, since the accessibility to stations/stops for disabled persons and persons with reduced mobility is indicated in paragraph 3.6.1 of the NS, this procedure should be better placed in the dedicated paragraph 3.6.1 “Passenger stations”.

With regard to certain points of the procedure proposed by RFI, the Authority notes the following. In accordance with measure 5.5 of Decision no 106/2018, the Authority identifies, as the sole contact person for compensation claims, the RU that provided the ticket for PSO services and that, for this reason, receives the request from the person with reduced mobility and includes it, subject to the necessary procedural checks (including, but not limited to: holding of ticket by the complainant PRM, etc.), in its system for handling compensation claims and/or complaints; the request will be handled, as the case may be, in accordance with Measure 8 or Measure 9.6 of the Decision, so that the user receives an answer and/or any compensation due. According to the above Decision no 106/2018, the RU, based on RFI’s preliminary findings, provides direct response to the person with reduced mobility and any compensation due. The Authority considers that the management of the financial relations between RUs and station manager can be regulated as proposed by RFI only if the RU agrees thereupon; if not, RFI, at the time of the reply to the RU regarding the compensation claim, should pay to the RU the sum due as compensation to the passenger. At the hearing of 30 October, RFI confirmed its intention to comply with the provisions of Measure 5.5 of the decision; furthermore, considering that its proposal to provide for the payment of compensation by the RU complies with the measure, it agreed on the Authority’s proposal, but clarified that from an operational point of view this procedure would be more burdensome for the IM and proposed, therefore, that RFI provides for a cumulative monthly settlement rather than by individual compensation. The Authority considers that the interface with the customer, carried out by the RU, already relieves RFI of various activities, and for this reason no excessive operational burden is placed on the IM if the latter provides for the payment to the RU of the compensation due to the customer at the same time as the reply given by the same IM to the RU in this respect.



### **2.8.2** Indications

No indications are provided.

### **2.8.3** Requirements

- 2.8.3.1** RFI is required to include the “Procedure for the processing of compensation claims for persons with reduced mobility pursuant to measure 5.2 of ART Decision no 106/2018” in paragraph 3.6.1 of the NS and to provide that the advance payment of the amounts due for compensation by the RUs and subsequent recovery by the IM is possible only upon agreement between the RU and the IM on the management of financial flows; in the absence of such an agreement, the IM, at the time of the reply to the RU concerning the compensation claim, will immediately credit the sum due to the RU.

### 3. Infrastructure – Chapter 3 of the NS

#### 3.1 ePIR Portal

##### 3.1.1 Assessments by the Authority

The ePIR portal is the tool whereby the IM provides information on the infrastructure and services supplied also through a GIS system; the ePIR portal provides the possibility of extracting files containing relevant information, but they usually do not provide adequate information on the version, date of publication of the document, its validity, etc. For this reason, the IM is required to supplement any technical annexes and documents that are available on its website with the following minimum information: author (RFI); period of validity; version; date of publication on the ePIR Portal; date of downloading from the IM system by the stakeholder. Further, in order to facilitate the use of such electronic documents by stakeholders, the IM shall also prepare a massive download command of all such documents in a single archive file.

##### 3.1.2 Indications

No indications are provided.

##### 3.1.3 Requirements

- 3.1.3.1 **The IM is required to provide, no later than 30 December 2020, that any downloadable technical annex or file of the ePIR Portal contains information concerning author (RFI); period of validity; version; date of publication on the ePIR portal; date of downloading from the IM system by the stakeholder. Paragraph 3.1 of the NS should be updated accordingly.**
- 3.1.3.2 **The IM is required to make available, no later than 30 December 2020, a function for downloading all the technical annexes and documents of the ePIR in zip. file with a single operation.**

#### 3.2 Freight terminals and maintenance facilities

##### 3.2.1 Assessments by the Authority

The ePIR portal shall contain up-to-date and verified information on the infrastructure available to users of the rail network, including those relating to freight terminals and maintenance facilities. For this reason, the IM is required to carry out a strict and timely check of the information reported on the different layers of the ePIR portal concerning these types of infrastructure.

With regard to freight terminals, at the hearing of 30 October, the IM offered to provide the information that led to the current update of the network starting from the 2009 directive of the President of the Council of Ministers which included 71 freight facilities.

Concerning maintenance facilities, at the same hearing the IM informed that, with respect to the maintenance facility of Venezia Mestre, the information had been provided by the facility operator and would be uploaded in the next publication of the ePIR portal, which was scheduled in December 2019. For the remaining facilities, where the IM takes on the role of facility operator, the same IM undertakes to implement the provisions of the legislation on access to service facilities and rail-related services on schedule (in particular, Implementing Regulation (EU) 2017/2177 and Decision no 130/2019).

##### 3.2.2 Indications

No indications are provided.

### **3.2.3 Requirements**

- 3.2.3.1** With regard to freight terminals, the IM is required to update the relevant layer contained in the ePIR portal no later than 30 March 2020, and to submit to the Authority, by the same date, a report on the development of the network including the facilities or freight terminals of the IM starting from the directive of the President of the Council of Ministers of 7 July 2009.
- 3.2.3.2** Regarding maintenance facilities, the IM is required to update the relevant layer contained in the ePIR portal no later than 30 March 2020, making sure that the information concerning the maintenance facility of Venice Mestre is reported in compliance with the provisions of Regulation (EU) 2017/2177 and Decision no 130/2109.

## **3.3 Service facilities not managed by RFI**

### **3.3.1 Assessments by the Authority**

Section 3.7 of the NS “Service facilities not managed by RFI” describes obligations and modalities for the publication by the operators of the service facility descriptions related to national railway infrastructure. Under measure 6 of Decision no 130/2019, the Authority identified the use of the European Rail Facilities Portal as an additional obligation for operators, for the purpose of publishing the information referred to in Article 5 of Regulation (EU) 2177/2017; the relevant paragraph of the NS shall be updated accordingly.

### **3.3.2 Indications**

No indications are provided.

### **3.3.3 Requirements**

- 3.3.3.1** The IM is required to supplement paragraph 3.7 of the NS with references to the provisions of Decision no 130/2019 and to add the following second last paragraph: “Pursuant to measure 6 (1) of ART Decision no 130/2019, service facility operators shall provide the service facility description also on the European Rail Facilities Portal (<https://railfacilitiesportal.eu>).

## **3.4 Infrastructure development**

### **3.4.1 Assessments by the Authority**

The IM, at least on a yearly basis, shall organise a technical meeting with stakeholders for the purpose of collecting proposals for the development of the infrastructure to ensure that this fits to future requests for rail transport services. In 2019, this technical meeting recorded a high participation of stakeholders (railway undertakings and awarding entities) that made a number of proposals that are currently under consideration of the IM and the MIT. The Authority considers it necessary that, at the end of the relevant analyses, the IM informs the market about its decisions on these proposals, by annually drawing up a detailed report to be made available on its website in the section “Network Strategies and Commercial Plan”. At the hearing on 30 October, the IM informed that it would send the final document in agreement with the MIT and, with regard to its publication, noted that this contains confidential information provided by the applicants.

To this end, the Authority considers it necessary that the parties who have submitted the requests (for improvement, efficiency and development of infrastructure) at the technical meeting indicate to the IM

whether the documents submitted contain confidential information, at the same time providing the IM with a version of the documents that may be disclosed.

### **3.4.2 Indications**

No indications are provided.

### **3.4.3 Requirements**

**3.4.3.1** The IM is required to publish, no later than 30 January each year, in the dedicated section of its website “Network Strategies and Commercial Plan”, a final report on the analysis and assessment of the proposals made by the stakeholders at the technical meeting referred to in paragraph 3.8 of the NS; this report should also include the list of requests submitted by individual stakeholders which have not been accepted, together with the relevant reasons. The contributions presented by the parties at the above technical meeting should be annexed to this report; for this purpose, the parties concerned shall inform the IM on whether these documents contain confidential information, at the same time providing the IM with a version of the documents that may be disclosed. The reports, including their annexes, should be kept available to interested parties on the IM website for at least 5 years.

**3.4.3.2** The IM is required to update paragraph 3.8 of the NS with the obligations set out under requirement 3.4.3.1.

## **3.5 Access to the network**

### **3.5.1 Assessments by the Authority**

With the NS 2021, in order to pursue capacity allocation aimed at ensuring effective and optimal use of the railway infrastructure (as provided for in Article 22 (2) of Legislative Decree no 112/2015), the IM introduced rules on “Standardisation of the bid” and “Efficient use of the systems in the hubs”. These rules are technical constraints impacting on the commercial bid of railway undertakings and applicants for capacity, in general; for this reason, also in relation to the statement of congestion of certain sections and facilities of the network, the IM should submit to the Authority, for its necessary assessments, the capacity analyses referred to in Article 32 of Legislative Decree no 112/2015:

- for the sections and facilities covered by these new rules;
- for the remaining sections for which, in the technical annex on the degree of utilisation of the network sections (in the version made available by the IM in the ePIR in February 2019), degrees of utilisation close to the same commercial capacity are identified (indicated in red in the Annex and with indication “SI” in the column “Statement of congestion”);

In order to ensure adequate and timely information to applicants for capacity, adequately in advance of the deadline of the annual capacity requests, the technical annex to the ePIR on the degree of capacity utilisation should be published no later than the 28<sup>th</sup> of February of each year.

At the hearing on 30 October, RFI agreed on the need to supplement the technical annex to the ePIR portal by also including the stations that are declared congested; with regard to capacity analyses, RFI stated that they are being carried out, without prejudice to the need to acquire the principles to define the scope of the congestion analysis (only congested lines for daily capacity or all congested lines, even only for some time slots?). In this regard, the Authority does not consider it necessary, at this point, to provide for specific

measures as this is a technical issue falling within the remit of the IM, such as, on the other hand, the identification of the parameters of technical and commercial capacity for each section as set out in the technical annex to the ePIR portal on the degrees of utilisation of the lines.

### **3.5.2 Indications**

No indications are provided.

### **3.5.3 Requirements**

- 3.5.3.1** The IM is required to submit to the Authority, no later than 31 March 2020, the capacity analyses referred to in Article 32 of Legislative Decree no 112/2015 concerning the sections and stations affected by the rules of network use referred to in paragraph 3.9.1 of the NS “Standardisation of the bid” and “Efficient use of the systems in the hubs”.
- 3.5.3.2** The IM is required to supplement the technical annex to the ePIR portal, reporting the degrees of utilisation of the network, with the list of stations that are declared congested by the IM. The IM will amend paragraph 3.9.2 of the NS accordingly.
- 3.5.3.3** The IM is required to publish, no later than 28 February of each year, the technical annex to the ePIR portal indicating the updated degrees of utilisation of the network. The IM will amend the last indent of paragraph 3.9.2 of the NS accordingly.

## 4. Capacity allocation – Section 4 of the NS

### 4.1 Obligation of prior notice with respect to the submission of requests for routes and services for passenger transport services

#### 4.1.1 Assessments by the Authority

Any interested party that intends to request capacity to operate new passenger transport services is required to communicate its intention to the infrastructure managers and regulatory bodies concerned at least eighteen months before the entry into force of the timetable to which the request for capacity refers. This obligation is expressly laid down in Implementing Regulation (EU) 2018/1795, which under Article 4(1) provides that “The applicant shall notify the infrastructure managers and the regulatory bodies concerned of its intention to operate a new rail passenger service in accordance with the deadline set in Article 38 (4) of Directive 2012/34/EU.”. This Regulation is transposed into the Italian law under Article 12 (5) of Legislative Decree no 112/2015, that provides for the possibility of imposing, in respect of rail passenger services, restrictions between a given point of departure and a given destination, if the economic equilibrium of one or more public service contracts covering the same route or alternative routes is compromised. In relation to these activities, it is necessary to provide the timetable for rail passenger services, broken down by High speed (HS), Medium-Long Open Access (ML OA), Medium-long PSO (ML OSP) and Regional PSO services operating on the national network and on the interconnected networks in respect of which the IM exercises the function of capacity allocation for access to the railway network.

#### 4.1.2 Indications

No indications are provided.

#### 4.1.3 Requirements

- 4.1.3.1 The IM is required to supplement paragraph 4.2 “Description of process” with a dedicated sub-paragraph “New passenger services - Notification requirements” where the obligation referred to in Article 4 (1) of Implementing Regulation (EU) 2018/1795 is specified.
- 4.1.3.2 The IM is required to make available, in database or “GTFS” format, the timetable for rail passenger services, broken down by HS, ML OA, ML PSO and Regional PSO services, operated on the national network and on the interconnected networks in respect of which the IM exercises the function of capacity allocation for access to the railway network. The timetable includes the departure and arrival times of each train at all service locations, including those where it does not operate passenger services, as well as the frequency of the service. The data must be sent no later than 15 days following the entry into force of the winter and summer timetable, respectively.

### 4.2 Limitations to the allocation of framework capacity

#### 4.2.1 Assessments by the Authority

In accordance with the wide range of points made under 2.3, it is necessary to provide, in paragraph 4.3.1 of the NS “Schedule for Capacity Requests for the purpose of the Framework Agreement”, that the requests for:

- renewal of existing FAs;
- conclusion of a new FA submitted by an applicant holding a FA that is already in force and is no longer renewable

may be submitted with an advance notice not exceeding 18 months from the start of the timetable to which the renewal or the new FA refers; this limit, which is reduced compared to the 5 years provided in the general case of the conclusion of a new FA relating to requests for financing the purchase of rolling stock and related type-approval or the operation of new infrastructure components, is justified by the need to limit prior capacity withholding.

Further, while maintaining the 85% limit for capacity that may be reserved under the Framework Agreement, it is necessary to set out that this limit may never be exceeded, thus deleting the requirements of Measure 1.6.4 of Decision no 76/2014 and providing for the necessary amendments to paragraph 4.4.1.1 of the NS “Limitations to the allocation of framework capacity”.

#### **4.2.2 Indications**

No indications are provided.

#### **4.2.3 Requirements**

**4.2.3.1 The following should be introduced at the end of paragraph 4.3.1 of the NS: “The previous 5-year limit from the planned start of the service is reduced to 18 months compared to the start of the service time if the request for framework capacity is finalised:**

- upon the renewal of existing FAs;
- upon signing a new FA, submitted by an applicant holding an existing FA that is no longer renewable.”.

**4.2.3.2 The following should be deleted from paragraph 4.4.1.1 of the NS: “This limitation does not apply to requests to conclude new Framework Agreements concerning capacity for local public transport services, as well as to the Framework Agreements already concluded.”**

### **4.3 Reserve capacity for requests in connection with the annual timetabling process within the freight catalogue**

#### **4.3.1 Assessments by the Authority**

In 2019, as part of its supervisory and monitoring activities concerning capacity allocation processes, also following reports from authorised applicants, the Authority noted an alleged difficulty on the part of railway undertakings engaged in seasonal (often international) traffic, such as the transportation of cereal products, in obtaining high-quality paths through requests in connection with the annual timetabling process (Changes made during the applicable working timetable period, VCO). This difficulty leads to distorted behaviour by some operators that require paths in the annual timetabling phase, without yet having any precise idea on their commercial needs<sup>1</sup> and that are later forced to continuing requests for total or partial cancellations of the same paths, a few days before carrying out the transport service, thus being subject to the penalties provided for in Table 1 of paragraph 4.6.3 of the NS.

Acknowledging the importance of such penalties to minimise market distortive behaviours and allow, on the one hand, the IM to optimise capacity allocation, and, on the other hand, applicants to consistently request capacity when the commercial relationship with their customers is defined and/or their production needs are clear, the Authority considers it important to consider the different needs of all the parties involved in rail

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<sup>1</sup> Origin/destination of transport, time slot of transport.



transport, and thus seek to ensure capacity for all, by diversifying the type of products available according to the market trends, with the main objective of allowing the sector the necessary flexibility to compete with road transport.

For this reason, which is also provided for in Article 30 (2) of Decree no 112/2015, should in the pre-catalogue consultation the need arise on certain lines<sup>2</sup> to safeguard part of the capacity for ad hoc requests submitted as VCO, the IM should provide for this possibility by defining in advance certain reserve capacity slots or paths for this type of traffic.

The concept of reserve capacity is also included in Article 14 (5) of Regulation (EU) 913/2010 and is actually used by Rail Freight Corridors (RFC) to determine their own reserve capacity offer, in the form of catalogue paths or time slots. This product had already been used by RNE Corridors, prior to the RFC, where, however, it was referred as residual capacity catalogue because the available capacity was determined after the annual allocation (hence, residual).

In order to define a capacity product available also for 2019/20 timetable, should this need arise for certain lines in the consultation phase for the 2020/21 catalogue, RFI should prepare a residual capacity freight catalogue net of the capacity already allocated during the annual timetabling process.

#### **4.3.2 Indications**

No indications are provided.

#### **4.3.3 Requirements**

- 4.3.3.1 The IM is required to introduce the following sentence at the end of the fourth indent of paragraph 4.4.2: “Annually, before the publication of the freight catalogue, the IM shall provide ART with a detailed report of the results of the consultations for the purpose of the production of the aforementioned catalogue.”.**
- 4.3.3.2 The IM is required to introduce the following sentence at the end of the fifth indent of paragraph 4.4.2: “In the event that the need arises for certain lines, to safeguard a portion of capacity for specific requests in time programming from the consultation phase with potential applicants, the IM defines this reserve capacity in advance and publishes it in the freight catalogue.”.**
- 4.3.3.3 If from the consultation phase with potential applicants for the 2020/21 freight catalogue the need arises for certain lines to safeguard residual capacity – if residual capacity is available - the IM is required to publish for 2019/2020 timetable and within the ASTRO IF application, a residual capacity freight catalogue that is intended to meet specific requests made during the 2019/2020 timetable.**

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<sup>2</sup> Even lines with limited or congested capacity

## 5. Services – Section 5 of the NS

### 5.1 Stop times at border stations for international freight trains

#### 5.1.1 Assessment by the Authority

In order to pursue the regularity of international freight trains, or their continuation in Italy from a foreign network, with respect to maximum transit stops for international freight trains (as set out in the Annex “Maximum time for transit operations of freight trains”), the Authority considers it appropriate for the IM to assess whether they are adequate as regards the technical inspection operations required for the continuation of the train. In this respect, at the hearing on 30 October, RFI – while pointing out that the timing published in the NS already stems from a detailed analysis of the technical operations to be carried out at border facilities and of the timing for their execution in order to optimise the capacity of the facility – made itself available to verify the need for any changes to the indicated stop times.

#### 5.1.2 Indications

- 5.1.2.1 The IM is given the indication to carry out a verification of the information set out in the Annex “Maximum time for transit operations of freight trains” considering the necessary technical operations and their timing and to submit to the Authority no later than 30 June 2020 an appropriate and complete report thereupon.**

#### 5.1.3 Requirements

**No requirements are provided.**

### 5.2 Passenger stations

#### 5.2.1 Assessment by the Authority

In including the content of measures 10.6.1 through 10.6.3 of Decision no. 70/2014 into points 1 to 3 of measure 11, Decision no. 130/2019 expanded the group of beneficiaries to include all “undertakings operating rail passenger services”, a category of entities defined in measure 2 (f) of Decision no 130/2019 as including, in addition to railway undertakings, also the companies operating in railway passenger transport by hiring railway undertakings for traction, or companies providing rail passengers with information and ticketing services on the basis of commercial agreements with the railway undertakings. In the rules governing the spaces and premises made available by RFI in passenger stations (paragraph 5.3.1.1 of the NS) and related standard forms of lease (Annexes 1 and 2 to Section 5), reference is still made exclusively to railway undertakings. At the hearing of 30 October, RFI pointed out that to date it has not received any request from entities, other than railway undertakings, falling within the above-mentioned wider category of beneficiaries. In the absence of data on the demand for spaces by the parties concerned that would allow RFI to establish specific measures for implementation of the principles and criteria set out in paragraphs 1 to 3 of Measure 11 of Decision no 130/2019, RFI should at least: mention in the “Description of the service” this wider category of beneficiaries (the definition of which will be appropriately included in the glossary under Section 1); introduce information on the “procedure and timeline for requesting the service” and “rights and obligations” of the parties, which may be simplified compared to what is currently provided for railway undertakings only, but which are in any case consistent with the principles and criteria mentioned and such to allow interested parties to request the spaces in question; point out that, even with regard to this wider category of beneficiaries, more detailed rules will be drawn up on the priority criteria for the allocation of spaces and premises and the conditions for their access, on the basis of an initial period of market observation, which will not extend beyond the 2019-2020 timetable.

Concerning the information introduced by RFI to specify the “Minimum allocation of the asset for service”, a RU requested that the minimum equipment be specified, in addition to ticket offices, mobile information desks and ticket validators, also for (i) technical premises and areas and (ii) passenger reception and assistance facilities. Given the greater heterogeneity of the spaces and premises made available by RFI for such use, it appears reasonable to allocate a 90-day period to RFI to provide the above information to the parties concerned.

### 5.2.2 Indications

**5.2.2.1** No later than 90 days of the date of publication of the NS 2021, RFI should supplement the description of the “Minimum allocation of the asset for service” concerning the spaces and premises made available to railway undertakings in passenger stations (paragraph 5.3.1.1 of the NS), with the information on (i) technical premises and areas and (ii) passenger reception and assistance facilities.

### 5.2.3 Requirements

**5.2.3.1** RFI is required to:

- a) mention in the “Description of the service” for the provision of passenger station spaces and premises (paragraph 5.3.1.1 of the NS) the wider category of beneficiaries consisting of “companies operating in railway passenger transport service” defined as “railway undertakings operating passenger services, or companies providing rail transport services by hiring railway undertakings for traction, or companies that provide rail passengers with information and ticketing services on the basis of commercial agreements with the railway undertakings.”.
- b) introduce the above definition of “companies operating in railway passenger transport services” in the glossary under Section 1;
- c) introduce also for this category of beneficiaries the information on “procedure and timeline for requesting the service” and “rights and obligations” of the parties, which may be simplified compared to what is currently provided for railway undertakings only, but which allow interested parties to request the spaces and premises in question, highlighting that RFI will develop more detailed rules on the basis of an initial period of market observation, which will not extend beyond the end of the 2019-2020 timetable.

## 5.3 Pre-heating

### 5.3.1 Assessments by the Authority

In the final draft of the NS 2021, RFI introduced an allowance of 1 h and 30 min for preheating services, without any comments from the stakeholders and without giving any reasons therefor. In the inquiry concerning the NS 2018 (ed. December 2016), and in particular at the hearing of 23 November 2016, when asked about the reason why it had introduced an allowance for the parking service, but not for the preheating service, RFI stated that “the reason for the differentiation between the treatment of “parking” and “preheating” services was that the flat rate of “preheating” refers to a service used for an average period of one hour per train, intended for passenger rolling stock of various type, including some that are not newly designed and are characterised by higher energy consumption”. The Authority considers that the provision concerning this pre-heating allowance should be deleted, also following RFI’s confirmation at the hearing of 30 October that this was a misprint.

### 5.3.2 Indications

- 5.3.2.1 The IM is given the indication to delete in paragraph 5.4.2 of the NS, sub-paragraph “*Description of the service*”, the following sentence: “for a period of time exceeding 1 hour and a half (1h and 30 min)”.

### 5.3.3 Requirements

No requirements are provided.

## 5.4 Marshalling services

### 5.4.1.1 Assessments by the Authority

At the hearing of 30 October RFI informed the Authority of its intention to submit the necessary documentation to the Authority in order to gradually phase out the marshalling service at border stations; for this purpose, it proposed to include in the NS evidence of this phase-out process, as well as of the new charges for marshalling services that would need to be issued if the obligation to supply the service were imposed on the IM, also on the basis of the reduction in the planned number of marshalling movements, as already recorded, and the continued bearing of the relevant costs by the IM. Since these new charges must, in any case, be subject to the principles and criteria set out in Decision No 96/2015 and be subject to an assessment of compliance by the Authority, RFI requests that these charges, once they are approved by the Authority, may be applied retroactively.

Based on the reports received from the operators of the relevant market, the Authority considers it necessary to keep the provision according to which the IM guarantees the marshalling service at border stations pending any proposals and organisational solutions to be advanced by the IM to the Authority for these stations, as provided for in Decision no 130/2019 (measure 12.5) and that, with a view to transparency, the IM should inform in the NS of the ongoing phase-out process that will be governed by the measures of the above-mentioned decision.

### 5.4.2 Indications

- 5.4.2.1 No indications are provided.

### 5.4.3 Requirements

- 5.4.3.1 The IM is required to keep the provision concerning the provision of marshalling services at border stations by supplementing paragraph 5.4.5 with the information relating to the gradual phase-out process that will be governed by the measures of Decision no 130/2019 on access to service facilities and rail-related services.

## 5.5 Accessibility and assistance to persons with reduced mobility.

### 5.5.1 Assessments by the Authority

Regulation (EC) No 1371/2007 (hereinafter: Regulation), under paragraph 1 of Article 22 (“Assistance at railway stations”), provides as follows: “*On departure from, transit through or arrival at, a staffed railway station of a disabled person or a person with reduced mobility, the station manager shall provide assistance free of charge*”.

*in such a way that that person is able to board the departing service, or to disembark from the arriving service for which he or she purchased a ticket, without prejudice to the access rules referred to in Article 19(1).”*

At the hearing of 30 October RFI stated that the assistance service pursuant to Article 22 of the above Regulation is also supplied in stations with a lower degree of accessibility than that provided for in the technical specifications for interoperability (TSI) for persons with reduced mobility (hereinafter: PRM TSI).

The Authority highlights that the right to accessibility is described in Article 21 of the above Regulation, which sets out that: *“1. Railway undertakings and station managers shall, through compliance with the TSI for persons with reduced mobility, ensure that the station, platforms, rolling stock and other facilities are accessible to disabled persons and persons with reduced mobility.*

*2. In the absence of accompanying staff on board a train or of staff at a station, railway undertakings and station managers shall make all reasonable efforts to enable disabled persons or persons with reduced mobility to have access to travel by rail.”*

This Article provides that the RU and the station manager, in compliance with the TSI, make efforts to ensure the right to transport even in unstaffed stations.

PRM TSI were first regulated by Commission Decision 2008/164/EC of 21 December 2007 (hereinafter: PRM TSI 2008), “concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system”, and later by Commission Regulation (EU) No 1300/2014 of 18 November 2014 (hereinafter: PRM TSI 2014), “on the technical specifications for interoperability relating to accessibility of the Union's rail system for persons with disabilities and persons with reduced mobility”, which repealed the 2008 PRM TSI, but identified under Article 11 the cases where it is still applicable. Both the 2008 PRM TSI (section 4.1.2.21.1 “Subsystem requirements”) and the 2014 PRM TSI (in section 4.4.3 “Provision of boarding aids and provision of assistance”) require infrastructure managers/station managers as well as RUs to draw up appropriate arrangements (and precisely indicate their contents) to ensure, within the limits and with the exceptions under the two TSI versions, accessibility of PRM to rail transport services.

With regard to the obligation to draw up the above-mentioned arrangements, RFI clarified that a procedure (COp 332 of 2014) is in force, developed in agreement with the RUs, to regulate the different obligations regarding the provision of assistance services (with attached operating rules provided for in the PRM TSI); this procedure covers a wider scope than that provided for in paragraph 4.4.3 of the TSI, as it is extended to all stations where RFI provides assistance services. RFI has defined this scope by ensuring maximum accessibility of stations and stops, considering the station traffic and regardless of the application of TSI.

Without prejudice to the scope already identified by RFI, the Authority considers that, in order to guarantee the right to accessibility provided for in the Regulation, and given the availability shown by RFI at the aforementioned hearing, a precise mapping of the stations and stops falling within the scope of the 2008 PRM TSI and the 2014 PRM TSI should be provided, as well as the actual drafting of the arrangements provided for by the applicable PRM TSI.

### **5.5.2 Indications**

No indications are provided.

### **5.5.3 Requirements**

**5.5.3.1 The IM is required, no later than 30 June 2020, to:**

- a) inform the Authority, for each station and stop open to passenger services, whether it falls within the scope of the PMR TSI (specifying the applicable version) and provide the reasons therefor;**

- b) **notify the Authority of the arrangements concluded with the RUs concerned as provided for in the relevant articles of the PMR TSI and send to the Authority a time schedule, shared with the RUs concerned, for the conclusion of these arrangements.**

- 5.5.3.2 **The IM is required to publish, as a technical annex to the ePIR portal, no later than 30 June 2020, a table including the information referred to under requirement 5.5.3.1 (a) and COp 322 of 2014.**

## 5.6 Customisation of public announcements in passenger stations

### 5.6.1 Assessments by the Authority

As part of the “Provision of additional information” (paragraph 5.5.2), RFI introduced *ad hoc* rules for the service offered to railway undertakings, consisting in the customisation of the information provided to the public through station information systems (e.g. use of graphics to characterise the train and display of its timetables), providing for the application of a fee to be determined each time for an amount equal to the actual cost incurred for the specific configuration requested and for the development of the IT system that may be necessary for its implementation (paragraph 6.3.4). At the hearing of 30 October, when it was asked to provide information in this respect, RFI clarified that “this type of customised information is increasingly requested by certain RUs, due to their marketing strategies, and have a cost of configuration and development which is currently included in the cost basis of the MAP [Minimum Access Package] and is therefore distributed to all users of capacity” (emphasis added); hence the proposal to “exclude these costs from the MAP, for the purpose of allocating them to the applicant”. RFI also clarified that the customisation of the information that might be requested when the network is first used would remain included in the MAP fee, and that therefore this fee would be charged only with reference to any adjustments that would be later requested.

In the light of the above, it is noted that the above cost, although less significant, was already part of the cost basis identified by RFI for 2014 and in relation to which RFI calculated the fee for access to the railway infrastructure for the current regulatory period. Therefore, no additional fee for this service should be provided in the current regulatory period.

### 5.6.2 Indications

No indications are provided.

### 5.6.3 Requirements

- 5.6.3.1 **RFI is required to amend paragraphs 5.5.2 and 6.3.4 of the NS by deleting the provision concerning a specific fee to be applied to customisation of the information services.**

## 5.7 Standard contract between single marshalling operator and railway undertaking

### 5.7.1 Assessments by the Authority

Annex 3 to Section 5 of the NS includes the standard contract between the single operator of the railway marshalling service and the railway undertaking, drawn up by the IM in 2015 to implement the provisions of measure 11.6.1 of Decision no 70/2014. As this regulatory measure has been repealed (point 3 of Decision no 130/2019), taking into account the provisions of Article 4 (2) (i) of Regulation (EU) 2017/2177 (under which the operator of the service facility shall publish model access contracts and general terms and conditions in the case of service facilities and rail-related services provided by them) and that the IM currently does not appear to perform in any railway area the role of Single Manager of the railway marshalling service, this model contract should be deleted from the NS.

At the hearing on 30 October RFI agreed to delete the abovementioned annex.

**5.7.2** Indications

- 5.7.2.1** The IM is given the indication to delete from the NS the standard contract between the single operator of the marshalling service and the RU, currently included under Annex 3 to Section 5.

**5.7.3** Requirements

No requirements are provided.



## 6. Charges– Section 6 of the NS

### 6.1 Connecting Stations with Foreign Networks

#### 6.1.1 Assessments by the Authority

In relation to the congestion of rolling stock at border stations, for delays of freight trains to/from foreign networks, the Authority has highlighted the need to introduce, following a dedicated consultation with the RUs, a penalty on the undertaking that is responsible for excessive stops in arrival and departure compared to the scheduled stop, providing for one hour allowance.

At the hearing on 30 October, while underlining the limits to the enforceability of this penalty, RFI shared the proposal; therefore, the Authority provides the IM with the indication to carry out a consultation process with the RUs so as to identify procedures for the application of these penalties, and their expected amount, at border stations in order to include them in the forthcoming NS 2022 draft proposal.

#### 6.1.2 Indications

- 6.1.2.1 The IM is given the indication to initiate by 28 February 2020 a consultation procedure to determine the penalties to be imposed on the RUs responsible for freight trains exceeding the scheduled stopping times before re-start at border stations. The procedure shall be concluded in time to allow this proposal to be included in the NS 2022 draft proposal.**

#### 6.1.3 Requirements

No requirements are provided.

### 6.2 Charges for areas, facilities and buildings for parking and storage of rolling stock

By note ref. no. RFI.DCO\PEC\P\2019\0000641 of 28 March 2019, RFI informed interested parties of the publication in the ePIR portal of the charging system for parking and storage of rolling stock, and sent the related methodological document (March 2019), both as amended following Decision no 119/2018. In addition, by note ref. no. RFI.DCO\PEC\P\2019\0000649 of 28 March 2019, RFI submitted to the Authority a set of tables, in excel format, containing “data and model used to determine the new charging system”, in order to allow the verification of the correct application of the methodological document, as provided for in point 3 of Decision no 119/2018. During the verification procedure, RFI clarified that the reporting of the stops made on secondary tracks (estimated in about 18 % of the total stops) can be based, at least until investments are made to equip these tracks with “field systems” (these investments being not foreseen for the time being), only on the scheduled time and not on the measurement of the actual parking time. Even for tracks equipped with field systems, RFI has not been always able to measure actual stopping times, due to constraints in the information system of RFI (which is currently being solved) or changes in the applicable working timetable period required by RUs that were not correctly accompanied by the necessary modifications in the allocated capacity”.

The above verification also revealed an error in the calculation of final traffic volumes (in terms of minutes) subject to charges in the period from January to February 2019, set out in paragraph 3.4 of the above-mentioned methodological document, which led RFI to overestimate the traffic volumes for the 2020-2021 period and, consequently, to identify a lower charge than that necessary to ensure coverage of the costs for providing the service plus a reasonable profit. At the hearing held on 30 October 2019, RFI therefore informed the Authority of its intention to increase the parking charge, compared to that communicated to the interested parties in March 2019, by recalculating its value on the basis of the estimates of the correct traffic volumes, and to publish the new charge in the NS 2021, reserving to assess any ensuing update for the NS 2020 as well.

Without prejudice to any later assessment by the Authority with respect to the decisions to be communicated by RFI in this regard, in line with the provisions of measure 41 of Decision no 96/2015, the above-mentioned methodological document should be published in the ePIR portal, with the necessary amendments and updates and with a list of subsequent revisions of the document already made available to interested parties. A reference to this document should be made in paragraph 6.3.2.4 of the NS. While respecting the need to provide stakeholders with maximum visibility on how to determine the economic conditions applied, Section 2 of that document (“Procedure for automatic measurement of rolling stock stopping times”) should be supplemented with a detailed description of the cases where reporting is still based on planned and not actual stopping time, and of the expected developments in that respect.

### **6.2.1 Indications**

No indications are provided.

### **6.2.2 Requirements**

- 6.2.2.1** The IM is required to supplement the methodological document for the determination of the fees for the use of areas, facilities and buildings for parking and storage of rolling stock, already sent by the IM to the interested parties on 28 March 2019, with a detailed description of the cases in which reporting is still based on scheduled rather than actual parking time, and with the expected developments in this respect. The methodological document thus supplemented, with the additional necessary amendments and updates and with a list of ensuing revisions of the document, already made available to interested parties, is published in the ePIR portal by 31 December 2019, and reference to it is made in paragraph 6.3.2.4 of the NS.

## **6.3 Shunting services**

### **6.3.1 Assessments by the Authority**

With regard to the charges applied by the IM for shunting services, the IM at the hearing of 30 October informed the Authority of its intention to plan a progressive phasing-out of the shunting service at border stations and to update the charges according to the recorded reduction in the planned number of shunting movements based on the principles and criteria set out in Decision no 96/2015 and the following relevant decisions of the Authority. The IM also informed that following the Authority’s approval of the updated charges, these could be applied retroactively.

The Authority, on the basis of what has already been provided under paragraph 5.4, considers that the wording of paragraph 6.3.3.5 in the NS 2020 should be kept. The update of the charges for shunting services will be carried out, at the request of the IM, according to the procedure provided for by the regulatory provisions in force.

### **6.3.2 Indications**

No indications are provided.

### **6.3.3 Requirements**

- 6.3.3.1** The IM is required to keep the current wording of the NS 2020 in paragraph 6.3.3.5 of the NS 2021.

## **6.4 Preheating, climatisation, parking.**

### **6.4.1 Assessments by the Authority**

In view of the entry into operation of new types of rolling stock, such as Rock, Pop and ETR 700, the IM should supplement the tables in paragraph 6.3.3 of the NS, where the power input is reported.

### **6.4.2 Indication**

- 6.4.2.1 The IM is given the indication to supplement the tables relating to the power input, which can be used to determine the energy consumption for preheating, climatisation and parking services in paragraph 6.3.3 of the NS.**

### **6.4.3 Requirements**

No requirements are provided.